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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 657.

28 March 1991

No. 657.

28 Maart 1991

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 4 of 1991: Judicial Matters Amendment Act, 1991.

No. 4 van 1991: Wysigingswet op Geregtelike Aangeleenthede, 1991.

Act No. 4, 1991

JUDICIAL MATTERS AMENDMENT ACT, 1991

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Magistrates' Courts Act, 1944, so as to bring the definition of "the rules" into line with the provisions of the Rules Board for Courts of Law Act, 1985; to provide that any person other than an attorney or an agent referred to in section 22 commits an offence if he recovers any fees or remuneration from a debtor in connection with the collection of any debt; and to increase the fine which may be imposed in terms of section 108 of the Act; to amend the Supreme Court Act, 1959, so as to effect a technical correction; to provide for the granting of default judgments by registrars; and to further regulate the production of any document or thing; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 15 March 1991.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 32 of 1944, as substituted by section 1 of Act 53 of 1970 and amended by section 23 of Act 94 of 1974, section 1 of Act 105 of 1982 and section 2 of Act 34 of 1986 5

1. Section 1 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "the rules" of the following definition:

"the rules" means the rules **[made under section 25]** referred to in section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985);" 10

Amendment of section 60 of Act 32 of 1944, as substituted by section 1 of Act 63 of 1976

2. Section 60 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) Any person who contravenes any provision of subsection (1), shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000, or, in default of payment, to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment." 15

Amendment of section 108 of Act 32 of 1944, as substituted by section 13 of Act 19 of 1985 20

3. Section 108 of the principal Act is hereby amended by the substitution in subsection (1) for the expression "R500" of the expression "R2 000".

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Amendment of section 10 of Act 59 of 1959, as amended by section 1 of Act 85 of 1963, section 1 of Act 41 of 1970, section 2 of Act 3 of 1977, section 1 of Act 18 of 1985, section 2 of Act 87 of 1985, section 3 of Act 98 of 1987 and section 16 of Act 88 of 1989

4. Section 10 of the Supreme Court Act, 1959, is hereby amended by the addition to subsection (1) of the following paragraphs:

- “(b) An appointment under this subsection may in the case of a person holding office in an acting capacity by virtue of any appointment under subsection (3) or (4), be made with retrospective effect from the commencement of the period during which he so held office, or, where he has so held office for two or more periods which together constitute a single uninterrupted period, from the commencement of the first of such periods. 5
- (c) (i) A deputy judge president of a provincial division may be appointed by the State President indefinitely or for such period as he may determine. 10
- (ii) A deputy judge president of a provincial division, designated by the State President, shall act as the judge president of that division during the latter’s absence, and the deputy judges president shall perform such other functions of that judge president as the judge president may assign to them .” 15

Insertion of section 27A in Act 59 of 1959

5. The following section is hereby inserted in the Supreme Court Act, 1959, after section 27: 20

“Judgment by default

27A. (1) A judgment by default may be granted and entered by the registrar in the manner and in the circumstances prescribed in the Rules made in terms of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985). 25

(2) Any judgment by default entered in terms of subsection (1) shall be submitted to a judge in chambers for confirmation.

(3) Any judgment by default confirmed by a judge in chambers shall be deemed to be a judgment of the court.”. 30

Substitution of section 30 of Act 59 of 1959, as amended by section 7 of Act 85 of 1963, Proclamation 222 of 6 November 1981 and section 3 of Act 18 of 1985

6. The following section is hereby substituted for section 30 of the Supreme Court Act, 1959:

“Manner of securing attendance of witnesses or the production of any document or thing in civil proceedings and penalties for failure 35

30. (1) A party to civil proceedings before the court of any division in which the attendance of witnesses or the production of any document or thing is required may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules of court. 40

(2) Whenever any person subpoenaed to attend any civil proceedings as a witness or to produce any document or thing fails without reasonable excuse to obey the subpoena and it appears from the return of the proper officer or from evidence given under oath that the subpoena was served upon the person to whom it is directed and that his reasonable expenses calculated in accordance with the tariff framed under section 42 (1) have been paid or offered to him, or that he is evading service, or if any person who has attended in obedience to a subpoena fails to remain in attendance, the court in which the said proceedings are conducted, may issue a warrant directing that he be arrested and brought before the court at a time and place stated in the warrant or as soon thereafter as possible. 45 50

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(3) A person arrested under any such warrant **[or any like warrant issued by the Supreme Court of South West Africa]** may be detained thereunder before the court which issued it or in any gaol or lock-up or other place of detention or in the custody of the person who is in charge of him with a view to securing his presence as a witness or to produce any document or thing at the said proceedings: Provided that the court may release him on a recognizance with or without sureties for his appearance to give evidence or to produce any document or thing as required and for his appearance at the enquiry referred to in subsection (4). 5

(4) The court may in a summary manner enquire into such person's evasion of the service of the subpoena or failure to obey the subpoena or to remain in attendance, and may, unless it is proved that such person has a reasonable excuse for such evasion or failure, sentence him to a fine not exceeding **[R300]** R1 000 or to imprisonment for a period not exceeding three months. 10 15

(5) Any sentence imposed by the court under subsection (4) shall be enforced and shall be subject to appeal as if it were a sentence imposed in a criminal case.

(6) If a person who has entered into any recognizance for his appearance to give evidence at such proceedings or to produce any document or thing or for his appearance at an enquiry referred to in subsection (4) fails so to appear, he may, apart from the forfeiture of his recognizance, be dealt with as if he had failed to obey a subpoena to attend such proceedings or appear at such enquiry." 20 25

Short title and commencement

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7. (1) This Act shall be called the Judicial Matters Amendment Act, 1991.

(2) Section 4 shall be deemed to have come into operation on 1 April 1989.

(3) Section 5 shall come into operation on a date fixed by the State President by proclamation in the *Gazette* and different dates may be so fixed in respect of different divisions of the Supreme Court referred to in the Supreme Court Act, 1959 (Act No. 59 of 1959). 30